

**BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA**

Appeal of Advisory Neighborhood
Commission 3C and Woodley Park
Community Association

BZA Appeal No. 17538
Decision Date February 6, 2007

Opposition to JBG's Motion To Strike

JBG asks the Board to strike appellants' February 1st response to JBG's January 29th letter on the ground that appellants' letter "goes beyond what was authorized by the Board." Motion at 1. As appellants pointed out, however, it was JBG that exceeded the Board's instructions by submitting additional argument in its letter. JBG was authorized to submit a citation to a case referred to by Mr. Nettler at the hearing, not to add "a reiteration their argument in the instant case," as JBG now claims. Motion at 2.

At the hearing, Mr. Nettler cited a Zoning Commission decision that was said to support the Zoning Administrator's determination here (Tr. 381-82). Vice-Chairperson Miller asked: "What's the Zoning Commission case that you were referring to that you said dealt in depth with the communication" (Tr. 405); Mr. Nettler offered to "provide you with it," and the Chair agreed. *Id.* At the end of the hearing, the Chair summed up what the parties were allowed to provide as "the drawing from A1.1 that's coming in now. We have two citations from Mr. Nettler" (Tr. 406). Although a citation was all the Board permitted, JBG submitted more than that.

JBG's additional filing was prejudicial and warranted a response, because JBG's argument is incorrect and not supported by the Zoning Regulations or the cited Commission order. As appellants noted in their February 1st response, the cited order expressly confirms appellants' position, stating: "But if the portions of that single structure have no above ground 'communication', the structure cannot be a single building." Order at 2.¹

This is not the only miscitation. At the hearing, JBG stated that in an earlier proceeding the Board had found that the owner of the Hotel was permitted to build an underground garage "as a matter of right" (Tr. 312). In fact, the Board held exactly the opposite. While noting that the garage and other proposed

BOARD OF ZONING ADJUSTMENT
District of Columbia

CASE NO. 17538
EXHIBIT NO. 29

Board of Zoning Adjustment
District of Columbia
CASE NO. 17538
EXHIBIT NO. 29

JBG's submission goes on to argue other points relevant to the merits of this case. It claims that the garage in question "is *entirely* underground." Motion at 3 (emphasis in original). This conveniently ignores a 660 square-foot elevator and stair enclosure that rises 15 feet above grade, plus a handful of other outcroppings.

JBG also argues "from a policy perspective" that the Zoning Regulations have little applicability below grade. Motion at 3. This is not accurate. Only when a rule expressly excludes what is below grade (as in the definition of gross floor area) does the rule not apply. If JBG were correct, there would have been no need for that definition to expressly exclude cellars. But when a rule makes no distinction between above and below ground (as in the definition of "building"), then there is no distinction.

For these reasons, appellants' one-page letter was a limited and appropriate response to JBG's submission, and JBG's motion to strike should be denied.

Respectfully submitted,

Nancy F. MacWood, Chair
Advisory Neighborhood Commission 3C
2737 Devonshire Place, NW
Washington, D.C. 20008
(202) 232-2232


Cornish F. Hitchcock
5301 Wisconsin Avenue, NW, Suite 350
Washington, D.C. 20015
(202) 364-1050
Attorney for Appellants

John M. Goodman, President
Woodley Park Community Association
2810 29th Street, NW
Washington, D.C. 20008
(202) 667-7630

CERTIFICATE OF SERVICE

I certify that a copy of this response was served electronically this 5th day of February, 2007 upon Dennis Taylor, counsel for the Zoning Administrator, Richard B. Nettler, counsel for JBG.

changes would benefit the Hotel and the neighborhood, the Board concluded, "the zoning regulations prohibit them." BZA Order No. 16072 at 11-12 (May 1, 1996).